

WZL TELETYPE

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:

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Administration of the North
American Numbering Plan

CC Docket No. 92-257
Phases One and Two

JUN 30 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

REPLY COMMENTS

McCaw Cellular Communications, Inc. ("McCaw") respectfully submits its reply comments in the above-captioned proceeding. McCaw supports prompt selection of a neutral NANP administrator (preferably by the Commission and other WZ1 regulators), expeditious transfer of responsibility for central office code assignments to the new NANPA, and development of a funding mechanism that recovers costs from all users of existing and future numbering resources.

I. THE COMMISSION SHOULD PROMPTLY SELECT A NEW NANP ADMINISTRATOR.

In its opening comments, McCaw urged the Commission, in conjunction with other WZ1 regulators, to promptly designate a new NANP administrator. McCaw explained that by selecting the new NANPA itself, rather than allowing it to be selected by an industry organization, the Commission can avoid questions regarding the loyalties of the entity and the source of its authority, and can ensure that the new NANPA is adequately staffed and funded.¹ McCaw further recommended that the new NANPA

¹ McCaw Comments at 2-3.

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report directly to the Commission (rather than to an industry body) and that disputes regarding eligibility of a particular applicant for a numbering resource be resolved by a dedicated numbering staff within the FCC.² Several other commenters agreed that the FCC, or a board under its direction, should select the new NANPA. These commenters generally explained that the Commission's involvement in the process is necessary to assure the neutrality of the new NANPA.³

In contrast, a number of parties supported an organizational structure developed by the Future of Numbering Forum. Expanding on the work of the FNF, they proposed that ATIS (or whichever entity acts as "sponsor" of the policy entity) would select the new NANPA through an RFP process.⁴ McCaw continues to believe that FCC selection of the NANPA is preferable, for the reasons noted above and discussed more fully in its opening comments. In addition, while McCaw understands why some parties want an industry body to select the new NANPA, it is concerned that the industry selection process would create unacceptable delay.

² Id. at 4-5. McCaw also recommended formation of a Numbering Policy Organization, which would be actively overseen by the FCC and other WZ1 regulators and open to all interested parties. This organization could embody many aspects of the existing INC, but would have the added advantage of Commission leadership for matters that are too contentious to resolve via the INC process. There is considerable support in the record for making the numbering policy entity an open, rather than a representative, body. See, e.g., Comments of BellSouth at 7, AT&T at 10, MCI at 6. Some parties, however, suggested that the policy entity be representative. See, e.g., Comments of MFS at 5, Bell Atlantic at 4, AirTouch at 2. McCaw continues to believe that the policy organization must be open. Industry segments are not homogeneous, and given the critical strategic value of numbering resources, it is inadvisable to grant one company within an industry sector the authority to speak for its competitors.

³ See, e.g., Comments of MFS at 3; Vanguard Cellular Systems at 6-7; Ad Hoc Telecommunications Users Committee at 4-5.

⁴ See, e.g., Comments of Bell Atlantic at 4; Pacific Bell at 2; MCI at 9.

Based on McCaw's longstanding experience with industry numbering discussions (and within the cellular industry, where the RFP process has been used), it believes that involving the whole communications industry in drafting an RFP, agreeing upon evaluation criteria, and assessing the responses could cause the process to drag on indefinitely -- and likely would require ultimate FCC involvement in any event. Such delay is particularly likely if ATIS is tasked with selecting the new administrator. The open, consensus nature of ATIS discussions is useful for assuring full discussion of policy matters. However, it is entirely inconsistent with timely selection of a new NANPA.⁵

Against this background, selection of the new NANPA by the Commission and its fellow WZ1 regulators is necessary to minimize delay. If the Commission nonetheless decides that an industry body should select the new NANPA, it should set milestones by which the RFP should be issued, responses returned, and a selection made. Specifically, to assure a prompt transition to the new NANPA, the new NANPA should be under contract no more than four months from the date of the Commission's decision in this proceeding.

⁵ Unfortunately, an alternative approach that might produce quicker results -- having a subset of ATIS, or the ATIS board, direct the RFP process -- is equally unacceptable. Any subset of the full membership would not have the backing of all industry members, and the ATIS board remains dominated by the LEC industry.

II. THE NEW NANPA SHOULD PROMPTLY ASSUME RESPONSIBILITY FOR ADMINISTERING CENTRAL OFFICE CODES.

McCaw strongly endorsed the Commission's proposal to centralize responsibility for assigning CO codes, explaining that administration of these codes by dominant LECs "has caused significant hardships to wireless providers"⁶ Many other commenters shared McCaw's views. For example, AirTouch -- until recently an affiliate of Pacific Bell -- stated that centralization of CO code assignments "is necessary to prevent discriminatory results in the timeliness of processing requests, interpretation of guidelines, or the charges, if any, that are imposed for code use."⁷ Teleport noted that it "should not have to rely on a strategic competitor for a critical resource," and further explained that:

[t]he process of applying for and assigning NXX codes requires a great deal of information regarding a carrier's network and customer base. Many carriers do not feel comfortable divulging such sensitive competitive information to the LECs.⁸

American Personal Communications reiterated the anti-competitive consequences of LEC control over code assignments:

Th[e] current method of assigning CO codes has resulted, and will likely continue to result, in unfair and discriminatory treatment of wireless providers. Indeed, in numbering plan area ("NPA") code splits, wireless providers continue to be treated unequally and are not given non-discriminatory access to new CO codes, even though LECs often blame the wireless industry for consumer disruption caused by area code splits. Additionally, assigning CO codes on a

⁶ Comments of McCaw at 3 n.8.

⁷ Comments of AirTouch at 4.

⁸ Comments of Teleport at 4-5.

regional -- as opposed to a centralized and national -- basis often results in contradictory interpretations of the guidelines and does not foster the development of industry-wide solutions to numbering issues.⁹

In contrast, a few LECs objected to the centralization of CO code assignment responsibility, at least at this time.¹⁰ These parties generally asserted that CO code management raises local issues, that code exhaust planning requires extensive local input, and that the transition to a new NANPA should not be complicated by adding new functions.¹¹ None of these reasons supports delay in centralizing CO code assignments.

The need for rapid transfer of assignment responsibilities is graphically illustrated by the proliferating problems engendered by LEC control over code exhaust planning (an essential part of CO code administration). AirTouch explains the seriousness of the matter:

AirTouch is currently facing a situation in Los Angeles, where we provide both cellular and paging services, which is representative of the overall problem. Pacific Bell and GTE announced a plan to overlay three existing area codes with an interchangeable area code in order to prevent number exhaust. The solution arrived at by the LECs affects only cellular and paging subscribers for the foreseeable future, forcing cellular and paging subscribers to change their numbers and to dial 10 digits to initiate local calls -- all with no offsetting mobile customer benefits.

⁹ Comments of APC at 2-3. See also Comments of AMTA at 6; MFS at 4; AT&T at 10 n.11; Ad Hoc at 6; Nextel at 8 n.10; Vanguard at 6-7; PCIA at 2; Sprint at 5.

¹⁰ Notably, several LECs that currently administer CO codes support centralization (although some express concern about the effect on the new NANPA and code exhaust planning). See Comments of BellSouth at 9; Ameritech at 4-5; GTE at 11.

¹¹ See comments of Southwestern Bell at 10-13; U S West at 8-11 (stating that it wants to give up the CO code assignment function, but suggesting that the FCC refer to the industry the issues raised in centralizing this function); Pacific Bell at 6-7; NYNEX at 9-10; Bell Atlantic at 4 (suggesting that the new NANPA be given one year to gain experience before assuming CO assignment responsibility).

While purporting to seek input from affected carriers, Pacific Bell and GTE never discussed or negotiated in good faith with AirTouch about its concerns, objections, or recommended alternatives. The overlay plan was publicly announced as a final decision (subject to transition issue discussions) which served the particular interests of local exchange carriers while placing costly, disproportionate burdens on wireless carriers and their customers. Access by paging and cellular carriers out of the existing NPAs are being provided on a conditional basis today, placing them at an immediate disadvantage.

....

LECs should not be in a position to maintain control over how a strategic resource will be parcelled out to other participants across a rapidly changing telecommunications arena. It is intolerable in a market as competitive and dynamic as telecommunications that when, how and where a wireless carrier assign numbers to its subscribers is regularly dictated by a competing user of those numbers.¹²

AirTouch's experience parallels that of McCaw. As McCaw's Los Angeles Cellular affiliate recently explained in a letter to Pacific Bell and GTE, those LECs made no effort to develop a consensus overlay plan, but rather adopted a unilateral approach that produces harsh consequences for cellular carriers and subscribers. The letter notes that isolating wireless services into a specific NPA makes them a ripe target for fraud, raises substantial concerns regarding dialing parity, and places wireless services at a competitive disadvantage.¹³ McCaw's Los Angeles messaging (paging) subsidiary, AirSignal, has similar concerns.

¹² Comments of AirTouch at 6-7.

¹³ See Letter from Mike McNelly, Executive Vice President of Engineering and Operations, Los Angeles Cellular Telephone Company to Liz Fetter, Vice President Industry Market, Pacific Bell, dated June 8, 1994 (Attachment A hereto). The same letter was sent to Larry Sparrow, Area President West, GTE.

This problem is not limited to Los Angeles. Wireless carriers have been seriously disadvantaged by similar code relief plans in New York, where the landline LEC implemented an overlay approach without regard to the effect on cellular and paging carriers. In suburban Chicago, wireless carriers currently are facing the same issues. Moreover, even where the CO code administrator engages in relief planning in a manner that produces consensus -- as U S West did with respect to the 206 NPA -- it may be unable or ill-equipped to anticipate the effect of the announcement of impending exhaust on demand for CO codes and to plan adequately for new growth.¹⁴

Centralizing CO code assignment and exhaust planning would avoid the troubling competitive issues discussed above. It also would allow the new NANPA to develop extensive experience in handling code exhaust situations across the nation, and therefore to avoid the type of situation that has arisen in the 206 NPA. In contrast, leaving CO code assignment responsibilities with the dominant LECs would aggravate an already unsatisfactory situation, and might motivate state regulators to attempt to take over this function. Although state regulators should have a voice in NPA exhaust planning -- and the new NANPA should be directed to take their views into account --

¹⁴ After U S West announced that the 206 NPA would exhaust in mid-1995, demand by all members of the industry increased substantially over forecasted expectations. In addition, the Washington Supreme Court struck down restrictions on local competition, opening the way for codes to be assigned to providers of competitive local exchange services. As a result, 206 likely will exhaust before the relief code (360) becomes available in January 1995.

McCaw respectfully submits that decentralizing code exhaust planning among 51 regulatory authorities would paralyze effective administration of the NANP.¹⁵

In light of these considerations, the Commission must adopt its proposal to transfer CO code assignment responsibilities to the new NANPA. To ameliorate any concern that the new entity would be initially overburdened if given both Bellcore's NANP administration functions and CO code assignment responsibilities, the Commission should require that the CO code assignment task be transitioned to the new NANPA starting six months after that entity commences operations. The transition process, however, must be completed within nine months after it begins in order to minimize continuing, egregious burdens on the wireless industry. In addition, local concerns can readily be accommodated by assuring that the new NANPA has the resources and obligation to become familiar with local dialing patterns and the needs of each of the local service providers (code holders), and solicits input from state regulators. These concerns simply do not rise to a level that compels retaining the current system any longer than necessary.

III. USERS OF BOTH EXISTING AND FUTURE NUMBERING RESOURCES SHOULD CONTRIBUTE TO RECOVERY OF NANPA-RELATED COSTS.

There is considerable agreement in the record that funding of the NANPA should be cost-based, equitable, and supported by all users of numbering resources.

¹⁵ Although state PUC administration of CO codes might be attractive, because the state could act as an impartial steward of public resources, one of McCaw's primary concerns is moving toward uniform, nationwide NANP administration where the NANPA could develop an expertise that could be applied to produce consistent, predictable results that take into account local conditions.

There is disagreement, however, with respect to the details of the funding mechanism. Specifically, at least one LEC asserted that only users of new numbers should be required to contribute.¹⁶ Other parties, in contrast, stated that both existing and new numbers should be counted in determining funding obligations.¹⁷

McCaw submits that it would be highly inequitable to disregard existing usage of numbering resources in determining how much individual entities must contribute toward recovering NANPA-related costs. Administration costs are driven by both existing and new numbers. Code exhaust, for example, does not result solely from growth in new services such as cellular and paging. Rather, code exhaust also is caused in part by the huge base of existing POTS numbers. Principles of cost-causation therefore compel that all use of numbering resources -- not just incremental usage following implementation of the new funding mechanism -- be counted in assessing contribution requirements for individual companies.

IV. CONCLUSION

The Commission should promptly select a new NANPA that reports directly to a dedicated numbering staff within the FCC and has broad responsibilities to administer all NANPA-related resources, including CO codes. In addition, the Commission should recognize an open Numbering Policy Organization to establish guidelines and other numbering policies through consensus procedures. Where necessary to resolve

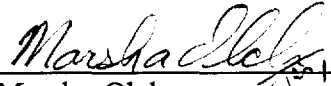
¹⁶ See Comments of Bell Atlantic at 5-6.

¹⁷ See Comments of Nextel at 11; Teleport at 6.

controversial matters, that Organization should be chaired by a member of the FCC's number staff. Major policy disputes should be resolved by the Commission using negotiated rulemaking procedures. Recovery of NANPA-related costs should be accomplished through cost-based charges imposed on all users of existing and new numbering resources.

Respectfully submitted,

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June 30, 1994

ATTACHMENT A



Los Angeles Cellular Telephone Company

June 8, 1994

Ms. Liz Fetter
Vice President Industry Market
PACIFIC BELL
370 Third Street, Room 714A
San Francisco, CA 94107

Dear Ms. Fetter:

This letter is in response to Pacific Bell's "Joint Pacific Bell/GTE 310 NPA Exhaust Relief Plan", announced publicly on March 22, and by advance notice to certain entities via a letter dated March 3. Since that time, L. A. Cellular has had the opportunity to study the joint PacBell/GTE recommendation and has concluded that the recommendation, if accepted as proposed, will have negative effects on (1) cellular and wireless service providers ability to effectively mitigate fraud, (2) the provision of cellular and wireless services in general, (3) cellular and wireless customers specifically, and (4) the development of a truly competitive telecommunications environment. L. A. Cellular herein offers a different option and also offers recommendations that would make the current proposal more acceptable.

First, let me stress that L. A. Cellular is sensitive to the pressure on numbering resources available to serve the greater Los Angeles area, resulting from the success of all forms of communications -- including cellular, paging, faxing, data and traditional POTS. L. A. Cellular's owners have invested significant time and energy in working with the industry to develop reasonable guidelines for the assignment of numbering resources. L. A. Cellular and its owners recognize the difficulties associated with any numbering relief proposal. Nonetheless, L. A. Cellular cannot accept an ill-conceived proposal that will meet only a portion of the total objectives that an exemplary proposal for numbering relief would meet -- especially when the plan mandates actions by the wireless industry, but only suggests that "other services", presumably landline services, will follow in the future.

L. A. Cellular's Comments on PacBell's Public Statements

Before I specifically address the recommendation, I must correct several statements made in the correspondence from Pacific Bell to L. A. Cellular, as well as ask a clarifying question. First, according to NPA relief planning guidelines being developed by the industry, the "NPA Relief Coordinator" (currently the local code administrator) is required to schedule meetings to discuss relief alternatives with the objective of reaching consensus on the method to be adopted. Clearly in this case, a single meeting, and optional questionnaire, did not result in consensus industry agreement on the proposed relief plan. In fact, I believe that a significant segment of the industry, the wireless segment, does not agree with the joint PacBell/GTE relief plan. The definition of consensus used in the FCC's sanctioned Industry Carriers Compatibility Forum (ICCF), under which the industry is developing these guidelines,

Ms. Liz Fetter
June 8, 1994
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clearly cite this situation -- one in which an entire industry segment does not agree with a proposed solution -- as precisely the type where there is not consensus. Both PacBell and GTE folks participate in ICCF and should be familiar with the definition of consensus. The joint PacBell/GTE recommendation does not represent a consensus position, nor was the meeting schedule adequate to allow time to develop such a position.

Second, the "study document" dated February 25, 1994, (attached to your March 3 correspondence) states that over half of the growth in the 310 NPA is attributed to cellular and paging services. While current growth is important, the number of existing NXX codes assigned to "landline" services, as compared with "wireless" services is also important. We request that all future public correspondence include that additional information, because without it, the public only gets half the story, and intentionally or not, wireless gets unfairly "blamed" for the exhaust.

Third, PacBell's reference to New York's application of an overlay as "successful" is completely subjective and is indicative of its mind-set throughout this process. Prior to drawing that conclusion, did Pacific Bell solicit the thoughts of any of the New York area wireless services providers or their customers who are now undergoing mandatory number changes? I believe that while an overlay could be successfully applied, neither the New York example, nor the joint PacBell/GTE Los Angeles recommendation contain the required elements for such success.

Fourth, one of the study criteria identified was that "The "overlay" concept is accepted by the Industry and minimizes the impact, as a whole, to the industry." Surprisingly, to date, the only landline carriers that have embraced the "overlay" concept, are those who have required the customers of other services (exclusively wireless customers) to take number changes and put all new growth into the new overlay code. To the best of our knowledge, not one LEC has begun to make any of the required changes to the "many supporting critical operating systems" that would allow LEC landline services to be offered using NXX codes under the overlay area code.

L. A. Cellular fears the fact that isolating cellular and wireless services into a specific NPA will make them a ripe target for all forms of fraudulent use.

As I am sure you are aware, one of the most significant problems facing the cellular industry today is fraud. In Los Angeles alone, fraudulent use of the existing cellular systems adds up to millions of dollars each year. The cellular industry has worked diligently to develop new methods to prevent fraudulent use of their systems. Unfortunately, the criminal element becomes more technologically savvy at the same rate as the cellular industry develops and implements fraud mitigating solutions. Therefore, even under the best circumstances, cellular carriers are continually challenged to rid themselves and their customers of this burden.

Under the current system, there is a random nature to the allocation of numbers to cellular carriers and their customers. If L. A. Cellular were to allow the 562 "overlay" to be implemented as proposed, we would be making ourselves and our customers sitting ducks for unfettered misuse by every nickel and dime crook in Los Angeles. This problem is especially onerous on the cellular carriers because, unlike paging numbers, cellular numbers are used to place calls. Thus being the case, it is of the utmost importance that a method be identified that will allow for the fair and equal allocation of overlay numbers to all forms of telecommunications.

L. A. Cellular Questions the Competitive advantages to be gained by the LECs as a result of the

"Recommendation"

Most importantly, the joint PacBell/GTE recommendation raises concerns regarding use of the local exchange carrier(s) monopoly power to gain unfair competitive advantage. From our perspective, it is no coincidence that the FCC has only recently issued a Notice of Proposed Rulemaking in the investigation of the NANP Administration. In that Order, the FCC tentatively concludes that number administration performed by Bellcore (through the NANPA) be transferred to a single, non-government entity that is not closely identified with any particular industry segment, and that local code administration functions (typically handled by the regional BOC), also be transferred to a neutral third party. We believe that the FCC reached this conclusion because of the problems -- as exemplified here -- associated with having a code administrator with decision making authority, that is biased toward a single industry segment.

The overlay also raises substantial concerns regarding dialing parity. The proposal will require all wireless customers in the new area code to dial 10 digits to call anyone in the other three area codes, and vice-versa. If seven digit dialing were not important, PacBell and GTE would have proposed 10-digit dialing as a part of the overall relief plan. The fact that PacBell and GTE would require additional digits to be dialed, only when calling to and from wireless customers, is patently unfair, and is one more example of how LECs use their power to gain unfair competitive advantages.

An interesting analogy can be drawn to another case when dialing disparity was identified as a means to further discrimination. As you may remember, one of the underpinnings of equal access, the tool that brought about long distance competition, was dialing parity. The fundamental principle is simple, customers must be able to reach the destination number using their carrier of choice by dialing the same number digits (known as 1 + dialing). In fact, carriers that could not get 1 + dialing were offered a substantial discount off of the current "access charges".

While these two examples are not entirely the same, the principle is. Equal access was developed in response to discriminatory practices used to retain a competitive advantage at the expense of other carriers. Perhaps PacBell and GTE should offer discounts for (1) interconnection rates for all calls between 562 and 310, and (2) charges to landline customers whenever they dial a 562 number. A discount in the range of 45% (similar to that called for by the FCC in the case of un-equal access) might begin to address the inequalities of the dialing advantages PacBell and GTE seek.

L. A. Cellular's Preferred Relief Plan

As previously stated, L. A. Cellular's preferred relief plan is that of a traditional code split. In principle, L. A. Cellular supports an overlay in which all services receive growth codes under the new NPA. An overlay is attractive because in theory, there are no mandatory number changes associated with an overlay. However, we cannot support the proposed PacBell/GTE overlay because it unfairly penalizes the wireless community, while protecting customers of wired carriers.

L. A. Cellular's Specific Comments on the "Joint PacBell/GTE Recommendation"

First, L. A. Cellular is pleased that the proposal has been described as a recommendation, and that PacBell has indicated its intention to conduct additional industry forums to "developing options and transition plans". We would like to provide our thoughts on how the current proposal could be improved. These comments are provided only in the event that the current recommendation is

adopted. Most importantly, all customers of all carriers must be treated equally. Specifically:

- 1) Embedded customers of both landline and wireless carriers (as of a particular date, e.g., September 1, 1994 -- call it the "stop date") must not be required to take a number change as a result of this relief plan. All 310 customers, wired and wireless, added after that date will be required to take a number change to the new 562 overlay code.
- 2) To balance the fact that wireless carriers will be asked effective with the "stop date" to take codes from other than the 310 area code, and effective with opening of the new 562 overlay, PacBell and GTE must make commitments as follows. First, as of a "conversion date", specific to be no later than one year after the new 562 code has been opened, begin serving all new wired and wireless growth from NXXs under the new 562 overlay code. Second, on or before the "conversion date", convert all wired customers after the "stop date" to the new 562 overlay code.
- 3) No 310 NXXs should be assigned after the "conversion date", until such time that the 562 code reached 50% utilization. At that point, code holders and applicants will be allowed to apply for either a 310 or a 562 NXX. Assignments will be made in the order received, as long as the application meets the industry assignment guidelines.
- 4) A specific plan associated with assigning new growth within the 213 and 818 must be developed. The plan must treat customers of all carriers equally. Unless these plans are a part of the overlay relief plan, it will be unclear how the overlay will work for those two codes.
- 5) Wireless carriers will receive a 45% discount on all existing costs of interconnection for all calls between area codes 562 and 310, and landline customers will not be assessed any measured charges above the flat monthly charges for calls to the 562 area code, until the earlier of such time that (a) the issue of dialing parity is resolved, or (b) 50% percent of the 562 NXX codes have been assigned and are working.

Conclusion

L. A. Cellular appreciates the past efforts made by PacBell's local number administration in provision of numbering resources, and its willingness to assist us when a code required expedited treatment. We are further sensitive to the difficulties associated with coming up with an acceptable exhaust relief plan. However, we believe that there are significant challenges associated with this relief plan. Specifically, as previously mentioned, consensus has not yet been reached regarding this relief method. Nonetheless, we believe that we can work together to develop a revised relief option which more fairly captures the needs of all the parties.

In furtherance of the aforementioned goals, L. A. Cellular calls for additional meetings of all affected carriers. Each meeting should have a specific agenda published in advance of the meeting. At the end of each meeting, the next meeting's agenda should be set. All carriers with an interest must be treated as equal participants in this very critical decision. All meeting dates must be announced well in advance of the meeting, with special attention given to ensuring that the dates do not conflict with any industry segments commitments. The ultimate objective is to reach an industry consensus solution.

Mr. Larry Sparrow
June 8, 1994
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I look forward to working with you to bring this matter to a mutually beneficial conclusion. Thank you for the work that has been done to date.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike McNelly", with a long horizontal flourish extending to the right.

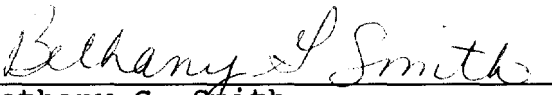
Mike McNelly
~~Executive Vice President of Engineering and Operations~~

cc: Mary Anderson
Bob Frame
Mike Heil
Marsha Olch

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 1994, I caused copies of the foregoing "Reply Comments of McCaw Cellular Communications, Inc." to be hand-delivered to the following:

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Federal Communications Commission
1250 23rd Street, N.W.
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Washington, D.C. 20554


Bethany G. Smith